

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

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Refer Reply To:

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Date:

January 30, 2012

### Legend

Controlled Parent =

Distributing Parent =

Acquirer 1 =

Acquirer 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Officer =

Consulting Firm =

Dear \_\_\_\_\_ :

This replies to your letter, dated September 15, 2011, as submitted by your authorized representatives, on behalf of Controlled Parent and its subsidiaries, requesting a ruling that the Commissioner determine, pursuant to § 1.1502-75(b)(2) of the Income Tax Regulations, that the subsidiaries had joined in the making of Controlled Parent's initial consolidated return for the period beginning on Date 2 and ending on Date 3. The information in that letter and supplemental letters, are summarized below.

### Summary of Facts

Prior to Date 1, publicly traded Distributing Parent was the common parent of an affiliated group of corporations filing consolidated returns that included Controlled Parent and its subsidiaries. On Date 1, Distributing Parent distributed to its shareholders the stock in Controlled Parent. For the taxable year beginning on Date 2 and ending on Date 3, Officer prepared the consolidated return (the "Initial Consolidated Return") for Controlled Parent and its subsidiaries (the "Subsidiaries"). However, due to inadvertence, Officer did not include Forms 1122 (Authorization and Consent of Subsidiary Corporation to be Included in a Consolidated Income Tax Return) with the Initial Consolidated Return and, although Form 851 (Affiliations Schedule) was included with the Initial Consolidated Return, one corporation was omitted.

On Date 4, unrelated Acquirer 1 acquired all the stock of Controlled Parent in a transaction that was not a reverse acquisition pursuant to § 1.1502-75(d)(3), thereby causing the Controlled Parent group to terminate and its members to join the Acquirer 1 consolidated group. On Date 5, unrelated Acquirer 2, a REIT, acquired Acquirer 1, thereby causing Acquirer 1 and its wholly owned subsidiaries, including Controlled Parent, to become Qualified REIT subsidiaries (within the meaning of section 856(i)(2)) disregarded as separate from Acquirer 2 for federal income tax purposes.

Acquirer 2 retained Consulting Firm to provide services with respect to the Date 5 acquisition and, during the course of providing these services, Consulting Firm discovered that the Initial Consolidated Return did not include Forms 1122 for Controlled Parent's subsidiaries and that one of the subsidiaries was omitted from the Form 851.

### Representations

Controlled Parent has made the following representations:

(a) Except for the failure to timely file Forms 1122, Controlled Parent and each of its subsidiaries during the period for which the Initial Consolidated Return was filed were eligible to file a consolidated federal income tax return with Controlled Parent as the common parent.

(b) The income, gain, loss, and deductions of Controlled Parent and for each of its subsidiaries in the taxable years ending on Date 3 and thereafter were included in the federal income tax returns filed by Controlled Parent as if Controlled Parent were the common parent of a consolidated group that included its subsidiaries.

(c) Controlled Parent's subsidiaries did not file any separate returns for any taxable year ending on Date 3 and thereafter.

(d) As of the date of this request, the Internal Revenue Service has not notified Controlled Parent or any of its subsidiaries of the failures to file Forms 1122 with the Initial Consolidated Return.

## Law

Section 1501 of the Code provides that the making of a consolidated return shall be upon the condition that all corporations which at any time during the taxable year have been members of the affiliated group consent to all the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for the filing of such return. The making of a consolidated return shall be considered as such consent.

Section 1.1502-75(a)(1) provides that a group which did not file a consolidated return for the immediately preceding taxable year may file a consolidated return in lieu of separate returns for the taxable year, provided that each corporation which has been a member during any part of the taxable year for which the consolidated return is to be filed consents (in the manner provided in § 1.1502-75(b)). If a group wishes to exercise its privilege of filing a consolidated return, such consolidated return must be filed not later than the last day prescribed by law (including extensions of time) for the filing of the common parent's return.

Section 1.1502-75(b)(1) provides that the consent of a corporation referred to in § 1.1502-75(a)(1) shall be made by such corporation joining in the making of the consolidated return for such year. A corporation shall be deemed to have joined in the making of such return for such year if it files a Form 1122 in the manner specified in § 1.1502-75(h)(2).

Section 1.1502-75(b)(2) provides that if a member of the group fails to file Form 1122, the Commissioner may under the facts and circumstances determine that such member

has joined in the making of a consolidated return by such group. The circumstances, among others, that will be taken into account in making this determination include: (i) Whether or not the income and deductions of the member were included in the consolidated return; (ii) Whether or not a separate return was filed by the member for that taxable year; and (iii) Whether or not the member was included in the affiliations schedule, Form 851, for such taxable year. If the Commissioner determines that the member has joined in the making of the consolidated return, such member shall be treated as if it had filed a Form 1122 for such year for purposes of § 1.1502-75(h)(2).

Section 1.1502-75(h)(1) provides that the consolidated return shall be made on Form 1120 for the group by the common parent corporation. The consolidated return, with Form 851 attached, shall be filed with the district director with whom the common parent would have filed a separate return.

Section 1.1502-75(h)(2) provides that if, under the provisions of § 1.1502-75(a)(1), a group wishes to file a consolidated return for a taxable year, then a Form 1122 must be executed by each subsidiary.

For the taxable years to which this ruling is relevant, the group must attach either executed Forms 1122 or unsigned copies of the completed Forms 1122 to the consolidated return. If the group submits unsigned Forms 1122 with its return, it must retain the signed originals in its records in the manner required by § 1.6001-1(e). Form 1122 is not required for a taxable year if a consolidated return was filed (or was required to be filed) by the group for the immediately preceding year.

## Ruling

Based solely on the information submitted and the representations made by Controlled Parent, we rule that the Subsidiaries have joined in the making of the Controlled Parent group's Initial Consolidated Return for the period Date 2 through Date 3. Thus, in accordance with the requirements for joining in filing a consolidated return as set forth in section 1501, the members are determined to have consented to all of the consolidated return regulations prescribed under section 1502 prior to the last day prescribed by law for filing such return.

## Caveats

We express no opinion about the tax treatment of the facts described above under other provisions of the Code or Regulations, or the tax treatment of any conditions existing at the time of, or effects resulting from, these facts that are not specifically covered by the above ruling.

Specifically, we are expressing no opinion as to the validity of any entity classification election made or not made with respect to any of the entities.

The ruling contained in this letter is based upon information and representations submitted on behalf of Controlled Parent and its Subsidiaries and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the taxpayer's ruling request. Verification of this material may be required as part of the audit process.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

**Richard M. Heinecke**

Richard M. Heinecke  
Assistant to the Branch Chief, Branch 6  
Associate Chief Counsel (Corporate)